

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

CARLTON BROWN, # 362723,

Petitioner,

v.

Case Number: 11-CV-10808

Honorable Sean F. Cox

MITCH PERRY,

Respondent.

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**ORDER GRANTING MOTION TO  
SUPPLEMENT OR AMEND HABEAS-PETITION PLEADINGS [DKT. # 6]**

**I. INTRODUCTION**

This is a habeas case filed under 28 U.S.C. § 2254. Pending before the Court is Petitioner Carlton Brown's "Memorandum of Law," filed on March 28, 2011. The Court construes the Memorandum as a Motion to Supplement or Amend Petitioner's Habeas-Petition Pleadings.

Petitioner is a state inmate currently incarcerated at the Newberry Correctional Facility in Newberry, Michigan. On February 28, 2011, he filed his *pro se* Habeas Petition, challenging his March 9, 2001 convictions for armed robbery, conspiracy, and felony firearm, imposed by a Macomb County Circuit Court jury. On April 9, 2001, he was sentenced to concurrent prison terms of eleven to twenty years for the armed-robbery and conspiracy convictions and a consecutive two-year term for the felony-firearm conviction. In his Pleadings, Petitioner raises the following three issues: insufficient evidence, prosecutorial misconduct, and lack of subject-matter jurisdiction. He is now requesting that the Court permit him to supplement or amend his Habeas Petition, adding legal arguments regarding his issue of subject-matter jurisdiction. For

the reasons set forth below, the Court grants Petitioner's request.

## **II. DISCUSSION**

Federal Rule of Civil Procedure 15 permits a party to amend a pleading before a responsive pleading is filed. Fed.R.Civ.P. 15. Respondent's answer and the Rule 5 materials are not due until October 3, 2011. The decision whether to grant leave to amend is discretionary with the district court. *Coe v. Bell*, 161 F.3d 320, 342 (6th Cir. 1998). In determining whether leave should be granted, the habeas court should consider several factors, including undue delay, undue prejudice to the opposing party, and futility of amendment. *Coe*, 161 F.3d at 341.

The Court finds that Petitioner did not delay in making this request to the Court. Additionally, the Court does not find that allowing Petitioner to supplement his Habeas Petition would cause undue prejudice to Respondent.

Therefore, the Court will use its discretion, grant Petitioner's Motion, and deem the attached Memorandum of Law filed as a Supplemental Pleading to his Habeas Petition.

## **III. CONCLUSION**

Accordingly, the Court **GRANTS** Petitioner's Motion to Supplement His Pleadings.  
(Dkt. # 6.)

**IT IS SO ORDERED.**

Dated: April 6, 2011

S/ Sean F. Cox  
Sean F. Cox  
U. S. District Court Judge

I hereby certify that on April 6, 2011, the foregoing document was served upon counsel of record by electronic means and upon Carlton Brown, by First Class Mail at the address below:

Carlton Brown #362723  
Newberry Correctional Facility  
3001 Newberry Avenue  
Newberry, MI 49868

Dated: April 6, 2011

S/ J. Hernandez  
Case Manager